

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION**

**KATRESA PLATT And  
NIESHA DAVIS,**

**PLAINTIFFS,**

**vs.**

**THE WAGGONERS TRUCKING, INC., and  
JACK OWENS, individually, and Fictitious  
Defendants “A”, “B”, and “C”, whether singular  
or plural, those other persons, corporations,  
firms or other entities whose wrongful conduct  
caused or contributed to cause the injuries and  
damages to Plaintiffs, all of whose true and  
correct names are unknown to Plaintiffs at this  
time, but will be added by amendment when  
ascertained,**

**DEFENDANTS**

**CIVIL ACTION NO:  
3:06cv1146-MHT**

**PLAINTIFFS’ MOTION FOR LEAVE TO FILE  
THEIR “SECOND AMENDED COMPLAINT”**

**I.**

Pursuant to the provisions of Rule 15(a) and Rule 15(d) of the Federal Rules of Civil Procedure, the Plaintiffs, by and through their undersigned attorneys, move the Court for leave to file the attached “Second Amended Complaint”:

- (a) In which the Plaintiffs have re-written paragraphs 1 through 10 and Counts One, Two, Three, Four and Five of their “First Amended Complaint” on file in this case, and
- (b) In which the Plaintiffs have added additional Count Six, which states a claim and cause of action for the wrongful death of Nyla Rosie Davis, Plaintiff Niesha Davis’

deceased minor child (who was born alive but prematurely on January 22, 2007, and who died on January 23, 2007), and

(c) In which the Plaintiffs aver that the death of the said infant child, Nyla Rosie Davis, is the proximate result of the motor vehicle collision that is the subject of this case.

## **II.**

The birth and the death of the said infant child, Nyla Rosie Davis, occurred since the filing of the Plaintiffs' "First Amended Complaint" in this case.

## **III.**

The original and one copy of said proposed "Second Amended Complaint" are attached hereto in compliance with M.D. Ala. LR 15.1.

## **IV.**

This motion should be granted for the following separate and several reasons and upon the following separate and several grounds:

(a). Plaintiff Niesha Davis has the exclusive right to maintain an action for the wrongful death of her infant child, Nyla Rosie Davis, deceased, under Alabama law.

(b). Plaintiff Niesha Davis has the right to join a claim for the wrongful death of her infant child, Nyla Rosie Davis, deceased, with Plaintiff Niesha Davis' claims for her own personal injuries in this case, under the provisions of Rule 18 of the Federal Rules of Civil Procedure.

(c). The Plaintiffs should be allowed to amend their complaint on file herein, pursuant to the provisions of Rule 15(d) of the Federal Rules of Civil Procedure, by adding the cause of action alleged in Count Six of Plaintiffs' Second Amended Complaint for the

wrongful death of the said Nyla Rosie Davis, deceased, who has died since the filing of the Plaintiffs' First Amended Complaint. Rule 15(d) provides as follows:

**(d) Supplemental Pleadings.** Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefore.

(d). The interest of justice, within the meaning of Rule 15(a) of the Federal Rules of Civil Procedure, also requires the granting of this motion.

(e). Furthermore, the granting of this motion will be in the interest of judicial economy.

(f). The granting of this motion will not delay any proceeding in this case.

(g). This case having just been filed, the granting of this motion will not prejudice the Defendants in any way.

**V.**

The attorneys for the Plaintiffs are filing a memorandum brief in further support of this motion simultaneously with the filing of this motion.

/s/ Michael W. Slocumb  
MICHAEL W. SLOCUMB (SLO010)  
ATTORNEY FOR THE PLAINTIFFS

OF COUNSEL:

SLOCUMB LAW FIRM, LLC  
2006 Executive Park Drive, Suite A  
Opelika, Alabama 36801  
Tel. No. (334) 741-4110  
Fax No. (334) 742-0525

/s/ Will O. Walton, III  
WILL O. (TRIP) WALTON, III (WAL046)  
ATTORNEY FOR THE PLAINTIFFS

OF COUNSEL:

WALTON LAW FIRM, P.C.  
2515 East Glenn Avenue, Suite 304  
Auburn, AL 36830  
Telephone No: 334-321-3000  
Facsimile No: 334-321-3007

**CERTIFICATE OF SERVICE**

I hereby certify that on February 1, 2007 I electronically filed Plaintiffs' Motion for Leave to File Their "Second Amended Complaint" in the Clerk of Court using the CM/ECF system which sent notice of such filing to counsel for Defendants, The Waggoners Trucking, Inc., and Jack Owens, individually and further mailed a copy of the same by first class

United States Mail as follows:

Hon. Floyd D. Gaines  
Hon. Andrew P. Walsh  
Gains, LLC  
P. O. Box 395  
Birmingham, AL 35201-0395

/s/ Michael W. Slocumb  
MICHAEL W. SLOCUMB (SLO010)